TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 23.

ALBERT MARBLES, APPELLANT,

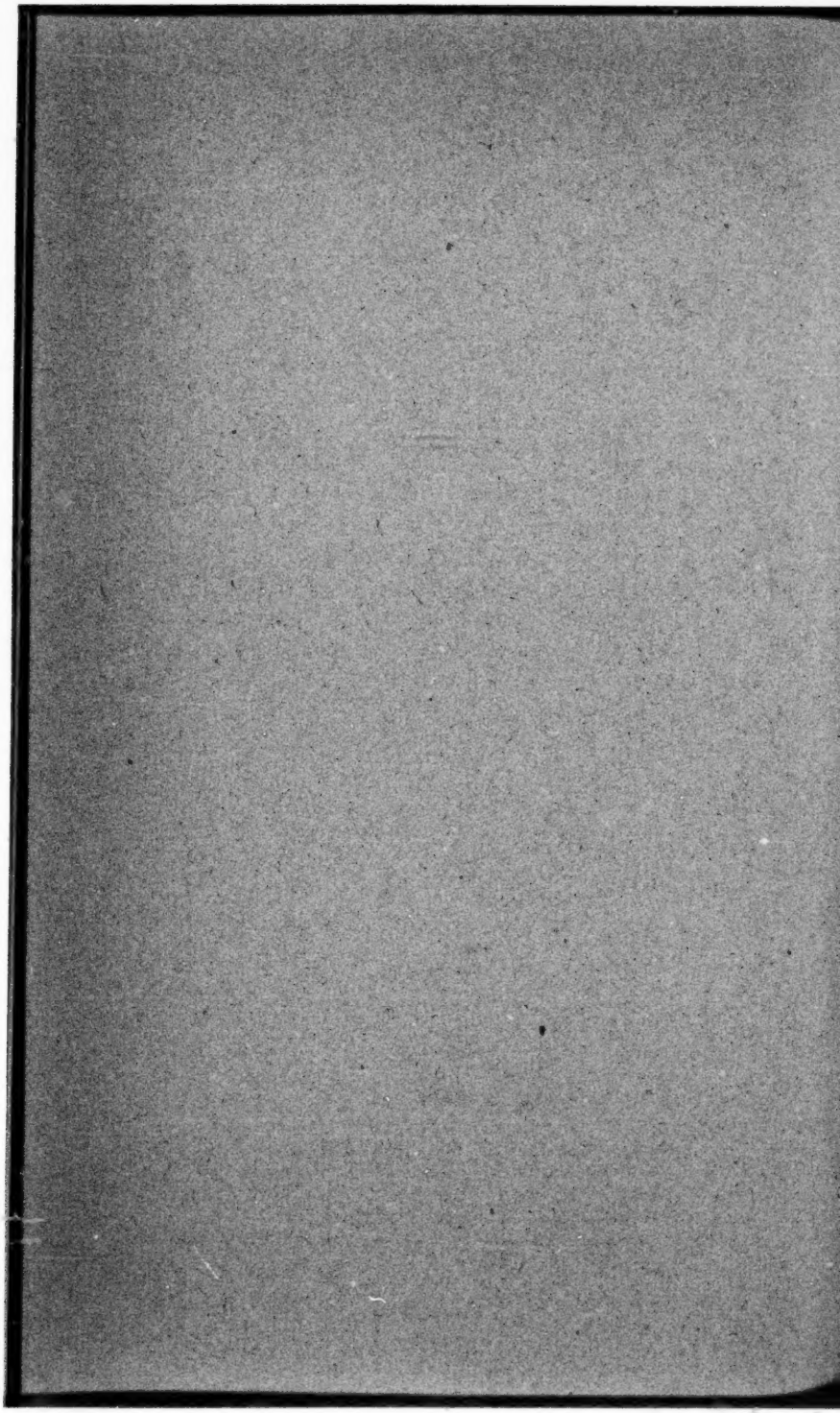
vs.

EDMUND P. CREECY, CHIEF OF POLICE OF THE CITY OF ST. LOUIS, AND CASPAR J. WOLFF, CITY JAILER OF SAID CITY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED NOVEMBER 8, 1907.

(20,900.)



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ALBERT MARBLES, APPELLANT,

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EDMUND P. CREECY, CHIEF OF POLICE OF THE CITY OF ST. LOUIS, AND CASPAR J. WOLFF, CITY JAILER OF SAID CITY.

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1 The United States of America to Edmund P. Creecy, Chief of Police of the City of St. Louis and State of Missouri, and Caspar J. Wolff, City Jailor of said City, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, thirty days from and after the day this Citation bears date, pursuant to an order, allowing appeal filed in the Clerk's office in the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, wherein Albert Marbles is appellant and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant as in said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable David P. Dyer, Judge of the Circuit Court of the United States for the Eastern District of Missouri, this 26" day of October in the year of our Lord one thousand nine hundred and seven.

DAVID P. DYER,
United States District Judge,
for the Eastern District of Missouri.

2 [Endorsed:] No. 5511. United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri. In the matter of Albert Marbles, Petnr. *vs.* —— ——. Citation. Filed Oct. 26, 1907. James R. Gray, Clerk.

I do hereby certify that I have served this writ at the city of St. Louis in the Eastern District of Missouri on the 26th day of October, A. D. 1907, by delivering a copy of same as certified by the clerk to Wm. C. McCarty, Secretary to the within named Edmund P. Creecy, Chief of Police of the city of St. Louis and State of Mo., and Caspar J. Wolff, City Jailor of said City.

WM. L. MORSEY,
U. S. Marshal,
By J. J. WILLIAMS, *Deputy.*

2 services	$4.00
1 mile	.06
	$4.06

3 UNITED STATES OF AMERICA,
Eastern Division of the Eastern
Judicial District of Missouri, ss:

In the Circuit Court of the United States in and for the Division and District Aforesaid.

Be it remembered: That heretofore to-wit: on the 16th day of October, A. D. 1907 there was filed in the office of the Clerk of the

Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri a petition for writ of *Habeas Corpus*, wherein Albert Marbles is Petitioner and Edmund P. Creecy, Chief of Police of the City of St. Louis and Casper Wolff, Jailor of said City, are Respondents, which said petition is in words and figures as follows, to-wit:

(*Petition for Writ of Habeas Corpus.*)

UNITED STATES OF AMERICA,
Eastern Division, Eastern
Judicial District of Missouri, ss:

In the Circuit Court.

To the Hon. Elmer B. Adams, one of the Judges of the Circuit Court of the United States of America, within and for the Eastern Division of the Eastern Judicial District of Missouri:

The petition of Albert Marbles respectfully shows: That he is a citizen of the United States and resident in and a citizen of the State of Missouri, and that on the 10th day of October, 1907, at the City of St. Louis within the division and district aforesaid, he was arrested by an officer of the Department of Police of the City of St. Louis aforesaid, and ever since that date he has been and now is unlawfully held and detained in custody at the City and State aforesaid and confined and detained in the Holdover or in the Jail in the building known as the Four Courts in said City by one Edmund P. Creecy, who is the Chief of Police of the City aforesaid, and by one Casper Wolff, who is the City Jailor, and this without any warrant or authority of law other than by virtue of a pre-
4 tended warrant of the Governor of the State of Missouri, pretended and assumed to have been granted on a pretended requisition from the Governor of the State of Mississippi, in which it is claimed and pretended that your petitioner has been indicted in the State of Mississippi and in the County of Warren in said State, under the alleged charge of assault on Duly Frank, with intent to kill, & said Creecy & Wolff threaten and are about to deliver your petitioner into the custody of one Fletcher, named in said warrant as the agent to receive your petitioner.

Your petitioner states that he has not seen the writ claimed to have been issued by the Governor of the State of Mississippi nor has a copy thereof been delivered to him so that it is impossible for your petitioner to set it out in full or to accompany this petition with any papers or exhibits that may have been or are attached thereto.

Your petitioner states that the Governor of the State of Missouri had no jurisdiction to issue his warrant in that it did not appear before him that your petitioner was a fugitive from the State of Mississippi or had fled therefrom nor did it appear in and by said writ that there was any evidence before the Governor of Missouri

that your relator was personally or had been continuously present in Mississippi when the crime was alleged to have been committed, and it appeared on the face of the indictment accompanying the requisition, that no crime under the laws of Mississippi was legally charged or had been committed by your petitioner in said State, or did it appear nor was it made to appear before the Governor of the State of Missouri at the time when requisition from the Governor of the State of Mississippi was presented to him, and a warrant asked for the extradition of your petitioner, that your petitioner was in fact a fugitive from justice from the State of Mississippi.

Your petitioner further avers that the requisition of the Governor of the State of Mississippi upon the Governor of the State of Missouri was not certified as required by the laws of the United States, nor was there produced before the Governor of the
5 State of Missouri, at the hearing of said requisition and before the granting of the warrant before referred to, a copy of any indictment found or of any affidavit being certified as authentic by the Governor of the State of Mississippi as required by the laws of the United States.

Your petitioner further avers that at the hearing before the Governor of the State of Missouri of the application for the warrant of extradition of your petitioner as aforesaid, he was not personally present and was not given an opportunity to meet the witnesses face to face which he had a right to do as a citizen of the State of Missouri under the Constitution and laws of that State, and he avers that this is a right granted by the Constitution and laws of the State of Missouri to all citizens within its jurisdiction, and that he as a citizen of the United States, resident within the State of Missouri, was deprived of that right.

Your petitioner further states that he is a negro, and that the race feeling and race prejudice is so bitter in the State of Mississippi against negroes that he is in danger, if removed to that State, of assassination and of being killed, and that he cannot have a fair and impartial trial in any of the Courts of that State, and that to deliver him over to the authorities of that State is to deprive him, a citizen of the United States and a citizen and resident of the State of Missouri of the equal protection of the laws.

Wherefore, your petitioner avers that his detention by said Edward P. Creecy and said Wolff, is without due process of law and without lawful authority, and that he is deprived of his liberty without due process of law contrary to the provisions of the Constitution of the United States and that contrary to the provisions of the 14th Amendment of the Constitution of the United States, he as a
6 citizen of the United States and within the jurisdiction of the State of Missouri, is denied the equal protection of the law.

Wherefore, your petitioner prays that the writ of *Habeas Corpus* issue commanding the said E. P. Creecy and said Casper Wolff, to produce the body of your petitioner now in the holdover or Jail as aforesaid, in the City aforesaid, and under their custody detained under safe and secure conduct before your Honor as one of the Judges of the Circuit Court of the United States for the Division and

District aforesaid on a day to be named by your Honor, and that your Honor inquire into the matter and on consideration thereof, cause the said Albert Marbles to be released and discharged from his arrest aforesaid. Your petitioner further states that no application for the relief sought has been made to any court or officer or officers superior to your Honor, prior to the presentation of this petition.

ALBERT MARBLES, *Petitioner.*

STATE OF MISSOURI,
City of St. Louis, ss:

Albert Marbles being by me duly sworn upon his oath says that the matters and things stated in the foregoing petition are true to the best of his information and belief.

ALBERT MARBLES.

Subscribed and sworn to before me this 16th day of October, 1907.

[SEAL.] WM. P. SHERIDAN,
Notary Public, St. Louis.

My commission expires Jan. 11th, 1911.

7 And thereupon to-wit: on the said 16th day of October, A. D. 1907, the following among other proceedings were had and appear of record in said cause, to-wit:

(*Order Granting Writ of Habeas Corpus.*)

5511.

In the Matter of ALBERT MARBLES, Petitioner.

Under the *Habeas Corpus* Act.

Now at this day comes said petitioner, Albert Marbles, by Messrs. George D. and George V. Reynolds, his attorneys, and files and presents to the Court his petition for a writ of *habeas corpus* in his behalf herein, upon consideration whereof it is Ordered that said writ issue as prayed directed to Edmond P. Creecy, Chief of Police, and to Casper Wolff, City Jailor of the City of St. Louis and state of Missouri, returnable Saturday, October 19th, 1907, at ten o'clock A. M.

8 And thereupon to-wit: on the said 16th day of October, 1907 there was issued out of the Clerk's office of said Court a writ of *Habeas Corpus*, which said writ is in words and figures as follows, to-wit:

(*Writ of Habeas Corpus.*)

In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

5511.

The President of the United States of America to Edmond P. Creecy, Chief of Police of the City of St. Louis, State of Missouri, and Casper Wolff, City Jailor of the City of St. Louis, Missouri, Greeting:

We command you, that you do on Saturday morning next, October 19, 1907, at ten o'clock in the forenoon, according to law without excuse or delay, bring, or cause to be brought, before the Honorable Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, at St. Louis, Missouri, the body of Albert Marbles by whatever name or addition he is known or called, who is unlawfully detained in your custody, as it is said, together with the day and cause of his detention, then and there to abide such order and direction as our said Court shall make in that behalf, and have with you this writ, with your return endorsed thereon, and herein fail not at your peril.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this sixteenth day of October, in the year of our Lord, one thousand nine hundred and seven.

Issued at office in the City of St. Louis, Missouri, in said
9 Division of said District, the day and year last aforesaid.

In Witness whereof, I hereto set my hand and affix the seal of said Court this 16th day of October, A. D. 1907.

[SEAL.] JAMES R. GRAY,
Clerk of the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.
By E. W. TOBIN,
Deputy Clerk.

A true copy.
Attest:
[SEAL.] JAMES R. GRAY, *Clerk.*

(*Marshal's Return on Writ of Habeas Corpus.*)

I hereby certify that I have executed the original writ of which this is a copy, at the City of St. Louis, in the Eastern District of Missouri, on the 16th day of October, A. D. 1907, by delivering same, together with a copy of the petition in this cause as certified by the clerk, to the within named Casper Wolff.

I further certify that I have delivered another original writ of which this is a copy, to Wm. C. McCarty, Secretary to the within named Edmond P. Creecy, Chief of Police of the City of St. Louis,

on the 16th day of October, A. D. 1907, at St. Louis, in the Eastern District of Missouri.

WM. L. MORSEY,
U. S. Marshal,
By J. J. WILLIAMS, *Deputy.*

10 And afterwards to-wit: on the 19th day of October, A. D. 1907 the following among other proceedings were had and appear of record in said cause, to-wit:

(*Order Allowing Petitioner to October 21 to Plead.*)

5511.

In the Matter of ALBERT MARBLES, Petitioner.

Under the *Habeas Corpus* Act.

Now at this day comes Edmund P. Creecy, Chief of Police of the City of St. Louis, and State of Missouri, and files his return to the writ of *habeas corpus* heretofore issued herein, and comes also respondent Caspar J. Wolff, City Jailor of said City, and likewise files his return and produces in open Court the body of said petitioner, whereupon, on motion of said petitioner by his attorneys, it is Ordered that he be allowed to October 21st, 1907, at 10 o'clock A. M. to plead to said returns and that in the meanwhile said petitioner be remanded to the custody of said respondent Wolff, Jailor as aforesaid.

Which said returns aforesaid mentioned, are respectively in words and figures as follows to-wit:

(*Return of Edmund P. Creecy.*)

UNITED STATES OF AMERICA,
Eastern Division, Eastern
Judicial District of Missouri, ss:

In the Circuit Court.

In the Matter of Petition of ALBERT MARBLES for Writ of *Habeas Corpus.*

Chief of Police's Return.

I, E. P. Creecy, Chief of Police of the City of St. Louis, Missouri, for my return to the writ of *habeas corpus* issued in this case, state that the petitioner Albert Marble, the person named in said
11 writ, is not held in custody by me, but is as I understand in the custody of the Jailor of the City of St. Louis.

E. P. CREECY,
Chief of Police, City of St. Louis, Mo.

(Return of Caspar J. Wolff.)

UNITED STATES OF AMERICA,
Eastern Division, Eastern
Judicial District of Missouri, ss:

In the Circuit Court.

In the Matter of Petition of ALBERT MARBLE for Writ of *Habeas Corpus.*

Jailor's Return.

I, Caspar J. Wolff, City Jailor of the City of St. Louis, State of Missouri, for my return to the writ of *Habeas corpus* issued in this case, state that the petitioner, Albert Marble, the person named in said writ, was committed to and is now in my custody in the City of St. Louis, Missouri, by virtue of a certain warrant duly issued by the Governor of the State of Missouri on the 16th day of October, 1907, witnessed by the Great Seal of the State of Missouri at the City of Jefferson on said date by the Governor, Joseph W. Folk, a copy of said warrant is hereto attached and marked Exhibit "A" and made a part of this return.

Nevertheless in obedience to the writ of *habeas corpus* issued herein, I, the said Jailor of the City of St. Louis, now produce the body of the said Albert Marble before this Honorable Court to be dealt with according to law, this, the 19th day of October, 1907.

CASPAR J. WOLFF,
City Jailor of the City of St. Louis, Mo.

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Copy.

"EXHIBIT A."

The State of Missouri to the Sheriff or Marshall of any county or city in this State:

Whereas the Governor of the State of Mississippi has demanded of the Governor of this State, Albert Marbles fugitive from justice from said State, and Whereas, the Governor — Mississippi has produced to me a copy of an indictment in said State certified to be authentic, charging said fugitive with having committed the crime of assault to kill.

Now therefore, I, Joseph W. Folk, Governor of the State of Missouri, do hereby command you to arrest the said Albert Marble anywhere within the limits of this State, and him secure and deliver to W. J. Fletcher who is the agent of said State of Mississippi duly authorized to receive the said fugitive.

And I do hereby command all Sheriffs, Marshals, Constables, and Police Officers to whom this warrant may be shown to aid and

assist in the execution of this process. And you will make due return to me on this warrant of your proceeding thereunder.

In testimony whereof, I hereunto set my hand and cause to be affixed the Great Seal of the State of Missouri. Done at the City of Jefferson, this 16th day of October, in the year of our Lord, One Thousand Nine Hundred and seven.

By the Governor.

JOS. W. FOLK.

[SEAL.] JNO. E. SWANGER,
Secretary of State.

13 And afterwards to-wit: on the 21st day of October, A. D. 1907, the following among other proceedings were had and appear of record in said cause, to-wit:

(*Motion to Discharge Submitted to Court.*)

5511.

In the Matter of ALBERT MARBLES, Petitioner.

Under the *Habeas Corpus* Act.

Now at this day come the parties hereto and said petitioner by his attorney now files a motion for his discharge upon the petition herein, and the returns of said respondents, which motion is argued by the respective counsel and submitted to the Court.

14 Which said motion to discharge above mentioned is in words and figures as follows, to-wit:

(*Motion to Discharge Filed by Petitioner.*)

In the United States Circuit Court, Eastern Division, Eastern Judicial District of Missouri, *ss:*

In re MARBLES

Comes now the petitioner in the above styled cause and moves his discharge by the court for the following reasons:

That the return of Casper J. Wolff, Jailor of the City of St. Louis, State of Missouri, to the writ of *habeas corpus* issued in this cause, and states that the petitioner, Albert Marbles, was committed to and is now in his custody in the City of St. Louis, Missouri, by authority of a certain warrant duly issued by the Governor of the State of Missouri on the 16th day of October, 1907, and witnessed by the Great Seal of the State of Missouri, at the City of Jefferson on said date by the Governor, Joseph W. Folk, a copy of which warrant is hereto attached, and marked Exhibit A and made a part of this return, and that in obedience to the writ of *habeas corpus* issued

herein, the said Jailor now produces said body of the said Albert Marbles before this Honorable Court to be dealt with according to law. And said return of said Jailor sets up no other matter than as hereinbefore set forth and the allegations in your petitioner's application for discharge, that the Governor of the State had no jurisdiction to issue a warrant in that it did not appear before him that your petitioner was a fugitive from the State of Mississippi or had fled therefrom, nor did it appear in and by said writ that there was any evidence before the Governor of Missouri that your petitioner was present or had been continuously present in Mississippi when the crime was alleged to have been committed; and it appeared on the face of the indictment accompanying the requisition that no crime under the laws of Mississippi was legally charged or had been committed by your petitioner in said State; nor did it appear nor was it made to appear before the Governor of the State of Missouri at the time when the requisition from the Governor of the State of Mississippi was presented to him for a warrant asking for the extradition of your petitioner, that your petitioner was in fact a fugitive from justice from the State of Mississippi" and that:

15

"Your petitioner avers that the requisition of the Governor of the State of Mississippi upon the Governor of the State of Missouri, was not certified as required by the laws of the Constitution of the United States, nor was there produced before the Governor of the State of Missouri at the hearing of said requisition and at the granting of the warrant, before referred to, a copy of any indictment found or of any affidavit being certified as authentic by the Governor of the State of Mississippi as required by the laws of the United States" and that:

"Your petitioner further avers that the hearing before the Governor of the State of Missouri of the application for the warrant of extradition of your petitioner as aforesaid, he was not personally present and was not given an opportunity to meet the witnesses face to face which he had a right to do as a citizen of the State of Missouri, under the Constitution and laws of that State, and he avers that this is a right granted by the Constitution and laws of the State of Missouri to all citizens within its jurisdiction, and that he as a citizen of the United States, resident within the State of Missouri, was deprived of that right," and that

"Your petitioner further states that he is a negro, and that the race feeling and race prejudice is so bitter in the State of Mississippi against negroes that he is in danger, if removed to that State, *is* assas-ination and of being killed, and that he cannot have a fair and impartial trial in any of the Courts of that State, and that to deliver him over to the authorities of that State is to deprive him, as a citizen of the United States and a citizen of the State of Mis-

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sissippi of the equal protection of the laws;" and that

"Wherefore your petitioner avers that his detention by said Edward P. Creecy and said Wolff, is without due process of law and without lawful authority, and that he is deprived of his liberty without due process of law contrary to the provisions of the Con-

stitution of the United States and that contrary to the provisions of the 14th Amendment of the Constitution of the United Sates, he as a citizen of the United States and within the jurisdiction of the State of Missouri, is denied the equal protection of the law, and that

"Wherefore, your petitioner prays that the writ of *Habeas Corpus* issue commanding the said E. P. Greecy and said Casper Wolff, to produce the body of your petitioner now in the holdover or Jail as aforesaid, in the City aforesaid, and under their custody detained under safe and secure conduct before Your Honor as one of the judges of the Circuit Court of the United States for the Division and District aforesaid on a day to be named by your Honor, and that your Honor inquire into the matter and on consideration thereof, cause the said Albert Marbles to be released and discharged from his arrest aforesaid.

Your petitioner further states that no application for the relief sought has been made to any court or officer or officers superior to your Honor, prior to the presentation of this petition," are not denied and must therefore be taken as admitted.

REYNOLDS & REYNOLDS,
Att'ys for Petitioner.

17 And afterwards, to-wit: on the 22nd day of October, 1907, there was filed in said cause by leave of Court an Amended Return of Respondent, Caspar J. Wolff, which said Amended Return is in words and figures as follows *as follows*, to-wit:

(*Amended Return of Respondent Wolff.*)

UNITED STATES OF AMERICA,
Eastern Division, Eastern Judicial District of Missouri, ss:

In the Circuit Court.

In the Matter of Petition of ALBERT MARBLE for Writ of *Habeas Corpus.*

Jailor's Return.

I, Casper J. Wolff, City Jailor of the City of St. Louis, State of Missouri, for my Amended Return to the writ of *habeas corpus* issued in this case, state that the petitioner, Albert Marble, the person named in said writ, was committed to and is now in my custody in the City of St. Louis, Missouri, by virtue of a certain warrant duly issued by the Governor of the State of Missouri on the 16th day of October, 1907, witnessed by the Great Seal of the State of Missouri at the City of Jefferson on said date by the Governor, Joseph W. Falk, a copy of said warrant is hereto attached and marked Exhibit "A" and made a part of this return.

The Respondent herein, Casper J. Wolff, denies that the warrant issued by the Governor of the State of Missouri heretofore referred

to, and copy attached as Exhibit "A," under and by virtue of which said warrant the relator Albert Marble is held in custody as heretofore stated is void, but alleges that said warrant is a valid warrant issued upon a valid requisition from the governor of the State of Mississippi accompanied by a copy of an indictment duly found, and duly certified as authentic by the Governor of the State of Mississippi, which said indictment charges the said Albert Mar-
18 ble, the petitioner herein, with a felony under the laws of the State of Mississippi, to-wit, assault with intent to kill, one T. J. Frank in the County of Warren in the State of Mississippi, a copy of said indictment is hereto attached and marked Exhibit "B" and made a part of this return.

Respondent further denies that the Governor had no jurisdiction to issue this warrant, or that it did not appear before him that the said petitioner was a fugitive from justice from the State of Mississippi, or had fled therefrom, or that it was not made to appear before the Governor of the State of Missouri at the time when requisition from the Governor of the State of Mississippi was presented to him and a warrant asked for the extradition of petitioner, that said petitioner was in fact a fugitive from justice from the State of Mississippi.

Respondent further denies that the requisition of the Governor of the State of Mississippi upon the Governor of the State of Missouri, was not certified as required by the laws of the United States, or that there was not produced before the Governor of the State of Missouri at the hearing of said requisition and before the granting of the warrant heretofore referred, to a copy of any indictment found, or of any affidavit being certified as authentic by the Governor of the State of Mississippi as required by the Laws of the United States.

Respondents admits that the petitioner herein is a negro but denies that the race feeling and race prejudice in the State of Mississippi is so bitter against the negroes that the petitioner, Albert Marble, is in danger, if removed to that State, of assassination or great bodily harm, or that he the said Albert Marbles cannot have a fair and impartial trial in any of the courts of the State of Mississippi, or that to deliver him over to the authorities of that state would deprive him as a resident citizen of the United States and of the State of Mississippi of the equal protection of the laws.

19 Respondent further denies that the contention of Albert Marble the petitioner herein is without due process of law and without lawful authority, or that said Albert Marble is deprived of his liberty without due process of law, contrary to the provisions of the Constitution of the United States, or contrary to the provisions of the Fourteenth Amendment of the Constitution of the United Sates, or that as a citizen of the United States and within the jurisdiction of the State of Missouri, is denied the equal protection of the law.

Respondent admits that at the hearing before the Governor of the State of Missouri of the application for the warrant for the extradition of petitioner, that petitioner was not personally present, but states that petitioner was represented by counsel.

Respondent denies that under the constitution and laws of Missouri the petitioner herein had a right to personally appear before the Governor of the State of Missouri and meet the witnesses face to face and be heard before the issuing of the warrant of extradition herein, or that as a citizen of Missouri or of the United States residing within the State of Missouri, was deprived of any rights under the laws of Missouri, or of the United States.

Nevertheless in obedience to the writ of *habeas corpus* issued herein, I, the said Jailor of the City of St. Louis, now produce the body of the said Albert Marble before this Honorable Court to be dealt with according to law, this, the 22*th* day of October, 1907.

CASPAR J. WOLFF,
City Jailor of the City of St. Louis, Mo.

20 Copy.

"EXHIBIT A."

The State of Missouri to the Sheriff or Marshal of any County or City in this State:

Whereas the Governor of the State of Mississippi has demanded of the Governor of this State, Albert Marble, fugative from justice from said state, and whereas the Governor of Mississippi has produced to me a copy of an indictment in said State certified to be authentic, charging said fugitive with having committed the crime of assault to kill.

Now therefore, I Joseph W. Folk, Governor of the State of Missouri, do hereby command you to arrest the said Albert Marble, anywhere within the limits of this State, and him secure and deliver to W. J. Fletcher who is the agent of said State of Mississippi duly authorized to receive the said fugitive.

And I do hereby command all Sheriffs, Marshals, Constables, and Police Officers to whom this warrant may be shown to aid and assist in the execution of this process. And you will make due return to me on this warrant of your proceeding thereunder.

In testimony whereof, I hereunto set my hand and cause to be affixed the Great Seal of the State of Missouri. Done at the City of Jefferson, this 16th day of October, in the year of our Lord, One thousand nine hundred and seven.

By the Governor,
JOS. W. FOLK.

[SEAL.] JNO. E. SWANGER,
Secretary of State.

21

(EXHIBIT B.)

STATE OF MISSOURI,

DEPARTMENT (Emblem) OF STATE.

To all to whom these presents shall come:

I, John E. Swanger, Secretary of State of the State of Missouri, and Keeper of the Great Seal thereof, hereby certify that the annexed pages contain a full, true and complete copy of Requisition of the Governor of Mississippi on the Governor of Missouri for the extradition of Albert Marble, filed October 16, 1907, as the same appears on file in this office.

In Testimony Whereof, I hereunto set my hand and affix the Great Seal of the State of Missouri.

Done at the City of Jefferson, this 21st day of October A. D., 1907.

[SEAL.]

JNO. E. SWANGER,
Secretary of State.
——— ———, *Chief Clerk.*

22

STATE OF MISSISSIPPI,

EXECUTIVE DEPARTMENT.

James K. Vardaman, Governor of said State, to His Excellency, the Governor of the State of Missouri:

Whereas, It appears by the annexed copy of an indictment which is hereby certified to be authentic, that Albert Marble stands charged with the crime of assault to kill committed in the County of Warren in this State, and it has been represented to me that he has fled from the justice of this State, and has taken refuge in the State of Missouri.

Now, therefore, Pursuant to the provisions of the Constitution and Laws of the United States in such case made and provided, I do hereby request that the said Albert Marble be apprehended and delivered to W. J. Fletcher who is hereby authorized to receive and convey him to the State of Mississippi, there to be dealt with according to law.

This State will not be responsible for any expense attending the execution of this requisition for the arrest and delivery of fugitives from justice.

Given under my hand, and the Great Seal of the State affixed at the City of Jackson, this 11th day of October, A. D., one thousand nine hundred and seven, and of the Independence of the United States of America the one hundred and thirty-two.

[SEAL.]

JAS. K. VARDAMAN.

By the Governor:
JOSEPH W. POWER,
Secretary of State.

23 *Application for Requisition.*

THE STATE OF MISSISSIPPI,
Warren County:

Personally appeared before me, J. W. Collier, Clerk of the Circuit Court for said County and State, F. A. Scott, Deputy Sheriff of Warren County in said State, who made oath that Albert Marble now stands charged in the County of Warren, with the crime of Assault to kill as evidenced, the accompanying certified copy of indictment. That the said Albert Marble is a fugitive from the justice of this State, and has taken refuge in the State of Missouri and that the ends of justice require that he be brought to trial. That this process is not for the purpose of collecting debt, or for any other purpose whatever, but for punishing the crime with which he is charged, and that W. J. Fletcher is named as a suitable person to be appointed Agent on the part of this State to receive and return the said fugitive to the State of Mississippi:

F. A. SCOTT,
Deputy Sheriff.

Sworn to and subscribed before me this the 11th day of October, A. D. 1907.

[SEAL.] J. W. COLLIER,
Circuit Clerk.

24 STATE OF MISSISSIPPI,
Warren County:

Circuit Court, December Term, 1906.

The Grand Jurors of the State of Mississippi, elected, summoned, empaneled, sworn and charged to enquire in and for the body of Warren County, State of Mississippi, at the term aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present that One Albert Marble late of the County aforesaid, on the 7th day of December A. D. 1906 with force and arms, in the County aforesaid, and within the jurisdiction of this Court, then and there upon the body of one T. J. Frank, a human being, there being, feloniously did make an assault with a deadly weapon, to-wit: a stick or club of more particular description to the Grand Jurors unknown and then and there with the stick or club aforesaid did feloniously strike, beat and wound the said T. J. Frank with the intent him the said T. J. Frank, then and there wilfully, feloniously and of his malice aforethought to kill and murder contrary to the statute in such cases made and provided, and against the peace and dignity of the State of Mississippi.

JAS. D. THAMES,
District Attorney.

STATE OF MISSISSIPPI,
Warren County:

I, J. W. Collier, Clerk of the Circuit Court in and for said County and State hereby certify that the foregoing is a true copy of the Indictment No. 128 of the State of Mississippi *versus* Albert Marble, indicted by the Circuit Court of Warren County, Mississippi on a charge of Assault to Kill.

Witness my hand and Seal of said Court at office in the City of Vicksburg, this the 11th day of October, A. D. 1907.

[SEAL.] J. W. COLLIER,
Circuit Clerk.

25 (Endorsed on back:) To Secretary of State. Issue Warrant. Jos. W. Folk, Governor. Filed Oct. 16, 1907. Jno. E. Swanger, Secretary of State.

26 And afterwards to-wit: on the 23rd day of October, A. D. 1907, the following among other proceedings were had and appear of record in said cause, to-wit:

(*Motion to Discharge on Amended Return Submitted to Court.*)

5511.

In the Matter of ALBERT MARBLES, Petitioner.

Under the *Habeas Corpus* Act.

Now at this day come the parties hereto by their respective attorneys and now the said petitioner files a motion for his discharge, and said motion being taken up is argued by said counsel and submitted to the Court.

27 Which said motion to discharge on amended return aforesaid mentioned is in words and figures as follows, to-wit:

(*Motion to Discharge on the Amended Return.*)

In the United States Circuit Court, Eastern Division, Eastern Judicial District of Missouri, *ss:*

In re MARBLES.

Comes now the petitioner in the above entitled cause and moves the Court to discharge the petitioner on the amended return of the Jailor, Casper J. Wolff and Edward P. Creecy, filed herein, for the following reasons:

That it appears upon the face of said amended return that the indictment which is set out in said return is not authenticated in accordance with the Acts of Congress, and

Because the warrant of the Governor of the State of Missouri as set out in the amended return, is void upon its face, in that it does not appear that the petitioner was found to have been a fugitive from justice by the Governor of the State of Missouri, and

Because the warrant of the Governor of the State of Missouri does not show that there was any evidence submitted to him tending to show that the petitioner was a fugitive from justice, and

Because the certificate of the Governor of the State of Mississippi and requisition, were void upon their face in that they did not comply with the Acts of Congress prescribing the requirements thereof, and because the requisition of the Governor of the State of Mississippi and accompanying papers purporting to be the papers submitted to the Governor of the State of Missouri, and on which the extradition was demanded & ordered, are not in conformity to Acts of Congress in such case made and provided.

28 Because the requisition of the Governor of the State of Mississippi, and the accompanying papers accompanying the return of the defendants in this case, are not sufficient in law to warrant the extradition of the petitioner, in that they do not comply with or conform to the Act of Congress and laws of the United States governing the same, and are not certified as required by the Act of Congress, and are void on their face.

Because the paper purporting to be a copy of the indictment found, and under which the extradition of the petitioner is demanded, is neither certified as required by the Act of Congress nor does it on its face show that it was ever found and returned in any court having jurisdiction of the offense, or by any grand jury lawfully empanelled, and is not evidence of any valid indictment having been returned in the State of Mississippi or elsewhere against your petitioner.

GEO. D. REYNOLDS, &
GEORGE V. REYNOLDS,
Attorneys for Petitioner.

And afterwards to-wit: on the 25th day of October, A. D. 1907, the following among other proceedings were had and appear of record in said cause, to-wit:

(*Order Overruling Motion to Discharge on Amended Petition.*)

5511.

In the Matter of ALBERT MARBLES, Petitioner.

Under the *Habeas Corpus* Act.

The Court having fully considered the motion of said petitioner for his discharge, doth Order that said motion be and the same is hereby denied, with leave to said petitioner to plead over to the amended return of respondent Caspar J. Wolff by the opening of

Court tomorrow morning, and the custody of petitioner to remain unchanged.

29 And afterwards, to-wit: on the 26th day of October, A. D. 1907, the following among other proceedings were had and appear of record in said Cause, to-wit:

(*Order Allowing Appeal.*)

OCTOBER 26TH, 1907.

5511.

In the Matter of ALBERT MARBLES, Petitioner.

Under the *Habeas Corpus* Act.

Now at this day come again all the parties hereto by their respective attorneys, and the said petitioner now in open Court declining to plead further to the returns to the writ of *habeas corpus* as filed by the respondents thereto, it is ordered that final judgment be entered herein for said respondents.

It is therefore considered, found and adjudged by the Court that at the time of the issuance of the writ of *habeas corpus* herein said petitioner Albert Marbles was not, and is not now restrained of his liberty by said respondent, Edmund P. Creecy as Chief of Police of the City of St. Louis and State of Missouri; and that at the time of the issuance of said writ said petitioner was and is now lawfully restrained of his liberty by virtue of his detention by said respondent, Caspar J. Wolff, Jailor of the City Jail of the City of St. Louis and State of Missouri, under a warrant issued by the Governor of the State of Missouri bearing date of October 16th, 1907, said warrant being lawfully predicated upon a requisition issued by the Governor of the State of Mississippi bearing date October 11th 1907; it is therefore

Ordered that said respondent Creecy stand discharged and go hence without day with his costs herein and that said petitioner, Albert Marbles, be and he is hereby remanded into the custody of said respondent Wolff, Jailor as aforesaid.

30 And now the said petitioner files and presents his assignment of Errors and Petition for an Appeal from the foregoing judgment to the Supreme Court of the United States; whereupon it is ordered that said appeal be and the same is hereby granted as prayed, and that upon said petitioner presenting a bond in the penal sum of Two Thousand Dollars a supersedeas of said judgment be awarded; and now said petitioner presents such a bond conditioned as required by law which is approved by the Court and ordered to operate as a supersedeas of said judgment pending said appeal; and now a Citation citing and admonishing said respondents to be and appear in said Supreme Court of the United States within thirty days after this date is signed by the Judge, and it is further

Ordered that the Clerk of this Court forthwith make and certify to said Supreme Court a full, true and complete transcript of the record and proceedings in this cause.

October 26th, 1907.

DAVID P. DYER, *Judge.*

Which said Assignment of Errors, Petition for Appeal, and Bond, are respectively in words and figures as follows, to-wit:

(*Assignment of Errors.*)

In the Circuit Court of the United States within and for the Eastern Division of the Eastern Judicial District of Missouri.

In re ALBERT MARBLES, Petitioner,

vs.

EDMUND P. CREECY, as Chief of Police of the City of St. Louis, State of Missouri, and CASPER J. WOLFF, as City Jailor of the City of St. Louis, State of Missouri.

31 Comes now Albert Marbles by his attorneys and files the following assignment of errors:

I. The Court erred in holding that the copy of the indictment set out in the amended return was authenticated in accordance with the Acts of Congress.

II. The Court erred in holding that the warrant of the Governor of the State of Missouri as set out in the amended return was valid.

III. The Court erred in holding that the warrant of the Governor of the State of Missouri showed that there was any legal evidence submitted to him tending to show that the petitioner was a fugitive from justice.

IV. The Court erred in holding that the certificate of the Governor of the State of Mississippi and requisition were valid upon their face, and that they complied with the Acts of Congress prescribing the requirements thereof.

V. The court erred in holding that the requisition of the Governor of the State of Mississippi and the accompanying papers purporting to be the papers submitted to the Governor of the State of Missouri and on which the extradition was demanded, were in conformity to the Acts of Congress in such case made and provided.

VI. The court erred in holding that the requisition of the Governor of the State of Mississippi and the accompanying papers attached to the return of the defendants in this case were sufficient in law to warrant the extradition of the petitioner and that they complied with the Act of Congress governing the same, and that they were certified as required by the Act of Congress and were valid on their face.

VII. The court erred in holding that the paper purporting to be a copy of the indictment alleged to have been found under which the extradition of the petitioner was demanded, was certified as re-

quired by the Act of Congress and that it showed on its face
32 that it was found and returned into a court having jurisdiction of the offense and by a grand jury lawfully empanelled, and that it was evidence of a valid indictment having been returned in the State of Mississippi or elsewhere against the petitioner.

VIII. The Court erred in holding that the indictment charged in substance any offense against the laws of the State of Mississippi.

IX. The Court erred in holding that the alleged affidavit of J. A. Scott, Deputy Sheriff of Warren County, alleging that the petitioner had fled from the justice of the State of Mississippi and taken refuge in the State of Missouri, was a valid affidavit certified to according to the Acts of Congress governing the same.

X. The Court erred in holding that the proceedings of the case before the Governor on the Governor of Missouri and his action thereon, seemed to be regular and not in violation of any Constitutional right of the petitioner nor in violation of any law of the United States.

XI. The Court erred in denying the motion of the petitioner to discharge.

XII. Because the warrant of extradition of the Governor of Missouri is not due process of law, as required by the Constitution of the United States, as set out in his petition.

XIII. Because the petitioner, by the refusal of the writ and for the reasons set out in his petition, is deprived of the equal protection of the law, guaranteed by the 14th Amendment to the Constitution of the United States.

XIV. Because upon the whole record, the petitioner should have been discharged.

ALBERT MARBLES,
By GEO. D. REYNOLDS &
GEORGE V. REYNOLDS,
His Attorneys.

33 *(Petition and Application for Appeal to the Supreme Court of the United States.)*

In the United States Circuit Court in and for the Eastern Division of the Eastern Judicial District of Missouri, September Term, 1907.

Petition for Appeal to the Supreme Court.

ALBERT MARBLES, Petitioner,
vs.
EDMUND P. CREECY, as Chief of Police of the City of St. Louis, State of Missouri, and CASPER J. WOLFF, as City Jailor of the City of St. Louis, and State of Missouri.

The above named petitioner, Albert Marbles, conceiving that he is aggrieved by the order and judgment made and entered into the above entitled cause on this twenty-sixth day of October, 1907,

wherein and whereby it was ordered and adjudged that he, the said Albert Marbles, be remanded to the custody of Edmund P. Creecy and Casper J. Wolff, under the warrant set out in the return herein does hereby pray an appeal from said order and judgment to the Supreme Court of the United States for the reasons specified in the assignment of errors filed herein, and he prays that this appeal may be allowed and that a transcript of the record, papers and proceedings upon which said order and judgment was made, duly authenticated, may be sent to the Supreme Court of the United States and prays that said appeal may be operated as a *supercedious* upon the petitioner giving a bond in such sum as may be fixed by the Court, conditioned upon the prosecution of said appellant and his appearance in said Supreme Court of the United States to abide whatever orders and judgment may be therein entered.

ALBERT MARBLES,
By GEO. D. REYNOLDS &
GEORGE V. REYNOLDS,
His Attorneys.

34 (*Bond.*)

Know all men by these presents, that we, Albert Marbles as Principal, and American Bonding Company of Baltimore, as Surety are held and firmly bound unto the United States of America to its use and to the use of any and all other parties who may be interested, in the full and just sum of Two Thousand Dollars, to be paid to the United States of America to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators and successors, jointly and severally by these presents.

Sealed with our seals and dated this twenty-sixth day of October in the year of Our Lord, One Thousand Nine Hundred and Seven.

Whereas, on the 16th day of October, 1907, at the September Term of the Circuit Court of the United States within and for the Eastern Division of the Eastern Judicial District of Missouri, in a proceeding in *habeas corpus* wherein Albert Marbles was petitioner and directed to Edmund P. Creecy and Casper J. Wolff, Defendants a Writ of *Habeas Corpus* was granted directing the said Edmund P. Creecy and Casper J. Wolff to produce the body of said Albert Marbles before the said Court on the 19th day of October, 1907, together with the cause of detention of said Albert Marbles; and

Whereas upon the hearing of the cause of detention of said Albert Marbles by said Edmund P. Creecy and Casper J. Wolff on the 26th day of October, 1907, it was ordered and adjudged that the said petitioner be remanded to the custody of said Creecy and said Wolff; and

Whereas upon the hearing of the cause of detention of said Albert Marbles by said Edmund P. Creecy and Casper J. Wolff on the 26th day of October, 1907, it was ordered and adjudged that the said petitioner be remanded to the custody of said Creecy and said Wolff; and

Whereas the said Albert Marbles has obtained an order granting

an appeal from said order and judgment to the Supreme
35 Court of the United States to reverse the same, and a citation directed to said Edmund P. Creecy and Casper J. Wolff citing and admonishing them to be and appear in the Supreme Court of the United States at the city of Washington, D. C., on or before thirty days from and after the date of said Citation:

The condition of the above obligation is such that if said Albert Marbles will appear in person or by attorney in the Supreme Court of the United States on such day or days as may be appointed for the hearing of said cause in said court and prosecute the said appeal and shall abide by and obey all orders made by the Supreme Court of the United States in said cause, and shall surrender himself to abide the order and judgment appealed from as said court may direct if the said judgment and order against him shall be affirmed, and if he shall appear for trial in the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, on such day or days as may be appointed for retrial by said Circuit Court and abide by and obey all orders made by said court, provided an order and judgment against him shall be reversed by the Supreme Court of the United States, then the above obligation shall be void, otherwise to remain in full force, virtue and effect.

ALBERT MARBLES, [SEAL.]
AMERICAN BONDING COMPANY OF BALTIMORE.
By THOS. C. HERRINGS, *Vice Pres.*

Attest:
A. J. WATLING, *Asst. Sec'ty.*

In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

Approved by the Court.
Attest:
JAMES R. GRAY, *Clerk.*

36 *(Memorandum.)*

In re ALBERT MARBLE. *Habeas Corpus.*

DYER, *J.:*

The simple and only question of importance to be decided by this Court is as to whether the petitioner is held in custody by proper legal authority.

It appears from the return made by the jailor of the City of St. Louis to the writ issued that on the 16th day of October 1907, the petitioner was arrested under a warrant issued by the Governor of Missouri.

That warrant is in words and figures following, to-wit:

"The State of Missouri" to the Sheriff or Marshal of any County or City in this State:

Whereas, The Governor of the State of Mississippi has demanded of the Governor of this State, Albert Marble, fugitive from justice from said state; and whereas, The Governor of Mississippi has produced to me a copy of an indictment in said State, certified to be authentic, charging said fugitive with having committed the crime of Assault to Kill.

Now, Therefore, I, Joseph W. Folk, Governor of the State of Missouri, do hereby command you to arrest the said Albert Marble anywhere within the limits of this State, and him secure and deliver to W. J. Fletcher, who is the agent of said State of Mississippi, duly authorized to receive the said fugitive.

And I do hereby command all Sheriffs, Marshals, Constables and Police Officers to whom this warrant may be shown to aid and assist in the execution of this process. And you will make due return to me on this warrant of your proceedings thereunder.

37 In Testimony whereof, I hereunto set my hand cause to be affixed the Great Seal of the State of Missouri. Done [SEAL.] at the City of Jefferson this 16th day of Oct., in the year of our Lord One Thousand, Nine Hundred and Seven.

By the Governor,

JOS. W. FOLK.

JNO. E. SWANGER,
Secretary of State.

It further appears from the return that prior thereto to-wit: on the 11th day of October, 1907, a requisition was made by the Governor of the State of Mississippi upon the Governor of Missouri for the apprehension of the petitioner.

This requisition and all the papers accompanying the same are certified by the Secretary of the State of Missouri to be as follows:

"STATE OF MISSISSIPPI,"
EXECUTIVE DEPARTMENT.

James K. Vardaman, Governor of said State, to His Excellency, the Governor of the State of Missouri:

Whereas, it appears by the annexed copy of an indictment which is hereby certified to be authentic, that Albert Marble stands charged with the crime of assault to kill committed in the County of Warren in this State, and it has been represented to me that he has fled from the justice of this State, and has taken refuge in the State of Missouri.

Now therefore, Pursuant to the provisions of the Constitution and Laws of the United States in such case made and provided, I do hereby request that the said Albert Marble be apprehended and delivered to W. J. Fletcher, who is hereby authorized to receive and

convey him to the State of Mississippi, there to be dealt with according to law.

This State will not be responsible for any expense attending the execution of this requisition for the arrest and delivery of fugitives from justice.

Given under my hand and the Great Seal of the State affixed at the City of Jackson, this 11th day of October A. D., one thousand nine hundred and seven, and of the Independence of the United States of America the one hundred and thirty-two.

JAS. K. VARDAMAN.

By the Governor:
JOSEPH W. POWER,
Secretary of State.

38 *Application for Requisition.*

THE STATE OF MISSISSIPPI,
Warren County:

Personally appeared before me, J. W. Collier, Clerk of the Circuit Court for said County and State, F. A. Scott, Deputy Sheriff of Warren County, in said State, who made oath that Albert Marble now stands charged in the County of Warren with the crime of Assault to Kill as evidenced by the accompanying certified copy of indictment. That the said Albert Marble is a fugitive from the justice of this State, and has taken refuge in the State of Missouri, and that the ends of justice require that he be brought to trial. That this process is not for the purpose of collecting debt, or for any other purpose whatever, but for punishing the crime with which he is charged, and that W. J. Fletcher is named as a suitable person to be appointed Agent on the part of this State to receive and return the said fugitive to the State of Mississippi.

F. A. SCOTT,
Deputy Sheriff.

Sworn to and subscribed before me this 11th day of October, A. D. 1907.

[SEAL.] J. W. COLLIER,
Circuit Clerk.

STATE OF MISSISSIPPI,
Warren County:

Circuit Court, December Term, 1906.

The Grand Jurors of the State of Mississippi, elected, summoned, empaneled, sworn and charged to enquire in and for the body of Warren County, State of Mississippi, at the Term aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present, that one Albert Marble, late of the County aforesaid, on the 7th day of December, A. D., 1906, with force and arms, in

the County aforesaid, and within the jurisdiction of this Court, then and there upon the body of one T. J. Frank, a human being, there being, feloniously did make an assault, with a deadly weapon, to-wit: a stick or club of more particular description to the Grand Jurors unknown, and then and there with the stick or club aforesaid did feloniously strike, beat and wound the said T. J. Frank, with the intent him, the said T. J. Frank, then and there wilfully, feloniously and of his malice aforethought to kill and murder, contrary to the statute in such cases made and provided and against the peace and dignity of the State of Mississippi.

JAS. D. THAMES,
District Attorney.

STATE OF MISSISSIPPI,
Warren County:

I, J. W. Collier, Clerk of the Circuit Court in and for said County and State hereby certify that the foregoing is a true copy of the Indictment No. 128, of the State of Mississippi *versus* Albert Marble, indicted by the Circuit Court of Warren County, Mississippi, on a charge of Assault to Kill.

Witness my hand and Seal of said Court at office in the
39 City of Vicksburg, this 11th day of October, A. D., 1907.

[SEAL.] J. W. COLLIER,
Circuit Clerk.

(Endorsed on Back:) To Secretary of State, Issue Warrant, Jos. W. Folk, Governor. Filed Oct. 16, 1907. Jno. E. Swanger, Secretary of State."

It will be seen from the warrant of the Governor, and the papers upon which the same was issued, that an indictment was duly found in the Court having criminal jurisdiction for Warren County, Mississippi, charging the petitioner with a felony, to-wit: Assault with intent to kill.

I have examined with care the indictment and am satisfied that in substance it charges an offense against the laws of the State of Mississippi.

Accompanying the requisition of the Governor of Mississippi is the affidavit of one F. A. Scott, Deputy Sheriff of Warren County, Mississippi, in which he says that the defendant there and petitioner here fled from the justice of the State of Mississippi and took refuge in the State of Missouri. Taking the whole record into consideration I am satisfied that the Governor of Missouri had sufficient evidence before him to justify his action in issuing the warrant.

The petitioner claims that the prejudice against him on account of his race is such in Mississippi that if he is taken back to that State he cannot have a fair trial therein, and that his life would be endangered by reason of such prejudice. I do not suppose that it is seriously contended that this court should refuse to do a plain duty on account of such an averment, or on account of such a claim. This court will assume that all of the rights that are guaranteed to

citizens by the constitution of the United States will be protected by every court in the land. It will be a sad day for the country
40 when the courts cannot be relied upon to give this protection to every one accused of crime.

The proceedings in the case before the Governor of this State, and his action thereon seems to be regular and not in violation of any constitutional right of the petitioner, nor in violation of any law of the United States. It follows that the motion to discharge the prisoner must be denied.

41 UNITED STATES OF AMERICA,
Eastern Division of the Eastern
Judicial District of Missouri, ss:

In the Circuit Court of the United States in and for the Division and District Aforesaid.

I, James R. Gray, Clerk of the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify that the above and foregoing is a full, true and complete transcript of the record and proceedings in the matter of Petition for writ of *habeas corpus* of Albert Marbles, against Edmund P. Creecy, Chief of Police of the City of St. Louis, and Casper Wolff, Jailor of said City of St. Louis, State of Missouri, as fully as the same remains on file and of record in said case in my office, and that the original citation is hereto attached and herewith returned.

In witness whereof, I hereunto subscribe my name and affix the seal of said Court, at office, in the City of St. Louis, in the Eastern Division of said District, this 1st day of November, A. D. nineteen hundred and seven.

[Seal of the United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri.]

JAMES R. GRAY,
Clerk of Said Court.

42 [Endorsed:] No. 5511. United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri. In the matter of *of* Albert Marbles. Transcript from U. S. Circuit Court, E. Div., E. Dist. Missouri.

Endorsed on cover: File No. 20,900. E. Missouri C. C. U. S. Term No. 201. Albert Marbles, appellant, *vs.* Edmund P. Creecy, Chief of Police of the City of St. Louis, and Caspar J. Wolff, City Jailor of said City. Filed November 8th, 1907. File No. 20,900.

Office Supreme Court, U. S.
FILED.
APR 24 1909
JAMES H. McKENNEY,

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 23.

ALBERT MARBLES, Appellant,

vs.

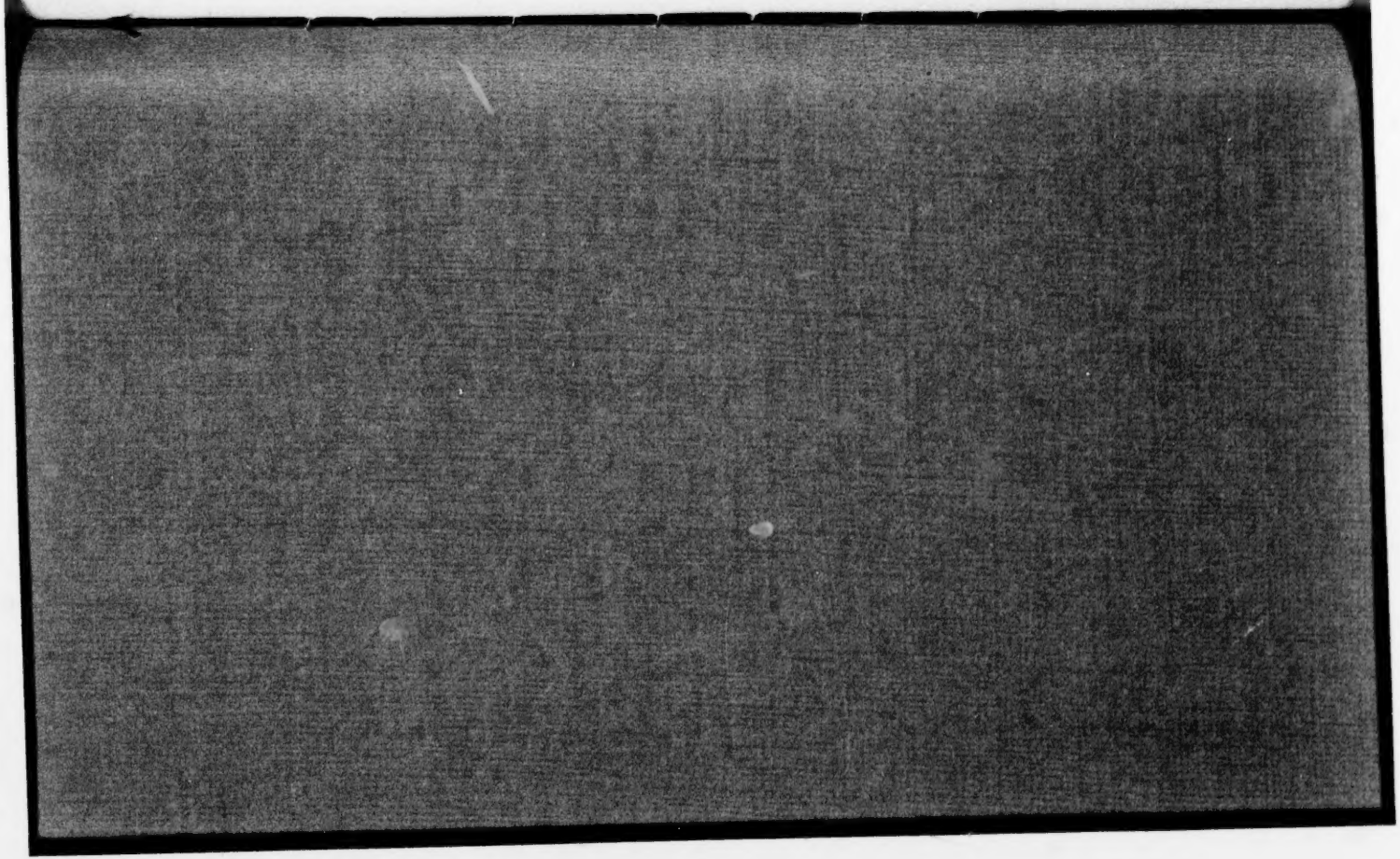
EDMUND P. CREECY, Chief of Police of the City of St. Louis, and CASPER J. WOLFF, City Jailer of Said City, Respondents.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI.

APPELLANT'S BRIEF.

George D. Reynolds.
Attorney for Appellant.

St. Louis Law Printing Co., 311-313 Locust. Bell, Main 1319



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 201.

ALBERT MARBLES, Appellant,

vs.

EDMUND P. CREECY, Chief of Police of the City of St. Louis, and CASPER J. WOLFF, City Jailer of Said City, Respondents.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI.

STATEMENT.

This is a case in which an application was made on the 16th day of October, 1907, in the United States Circuit Court for the Eastern Division of the Eastern Judicial District of Missouri, on behalf of the appellant, Albert Marbles for a writ of *habeas corpus* directed against Edmund P. Creecy, Chief of Police of the City of St. Louis and State of Missouri, and Casper J. Wolff, City Jailer of said city.

The appellant's petition for a writ of *habeas corpus* was filed on the 16th day of October, 1907, in the office of the Clerk of the Circuit Court of the United States in and for the East-

ern Division of the Eastern Judicial District of Missouri. The petition was addressed to the Honorable Elmer B. Adams, one of the Judges of the Circuit Court of the United States of America within and for the Eastern Division of the Eastern Judicial District of Missouri.

Among other things the petition sets out that Albert Marbles was a citizen of the United States and a resident in and a citizen of the State of Missouri, and that on the 10th day of October, 1907, at the City of St. Louis, within the Division and District aforesaid, he was arrested by an officer of the Department of Police of the City of St. Louis and ever since that date has been unlawfully held and detained in custody at the city and State aforesaid and confined and detained in the hold-over or in the jail in the building known as the Four Courts in said city by one Edmund P. Creecy, Chief of Police of the city aforesaid and by one Casper Wolff, who is the City Jailer, without warrant or authority of law other than by virtue of a pretended warrant of the Governor of the State of Missouri, pretended and assumed to have been granted on a pretended requisition from the Governor of the State of Mississippi in which it was claimed and pretended that the appellant had been indicted in the State of Mississippi, County of Warren, under the alleged charge of assault on one Duly Frank with intent to kill. That said Creecy and Wolff were threatening to and about to deliver the petitioner into the custody of one Fletcher, named in said warrant as the agent to receive the petitioner.

The petition alleged that the Governor of the State of Missouri had no jurisdiction to issue his warrant in that it had not been made to appear before him that the petitioner was a fugitive from the State of Mississippi or had fled therefrom, nor did it appear in and by said writ that there was any evidence before the Governor of the State of Missouri that the petitioner was present or had continuously been present in Mississippi when the crime was alleged to have been committed, and that it appeared on the face of the indictment accompanying the requisition that no crime under the laws of Mississippi was legally charged or had been committed by the petitioner in said State, nor did it appear, nor was it made to appear before the Governor of the State of Missouri at the time when the requisition from the Governor of the State of Mississippi was

presented to him and a warrant asked for the extradition of the petitioner, that the petitioner was in fact a fugitive from justice from the State of Mississippi.

The petition further charged that the requisition from the Governor of the State of Mississippi upon the Governor of the State of Missouri, was not certified as required by the laws of the United States. That there was not produced before the Governor of the State of Missouri at the hearing on said requisition and before the granting of the warrant, a copy of any indictment found or any affidavit which was certified as authentic by the Governor of the State of Mississippi as required by the laws of the United States

The petition charged that at the hearing before the Governor of the State of Missouri on the application for the warrant of extradition of the petitioner that the petitioner was not personally present and was not given an opportunity to meet the witnesses face to face, which he had a right to do as a citizen of the State of Missouri under the Constitution and laws of that State, and that this was a right granted by the Constitution of Missouri to all citizens within its jurisdiction. That the petitioner was a citizen of the United States, a resident within the State of Missouri and was deprived of that right.

Among other things, the petition charged that the petitioner was a negro and that the race feeling and race prejudice was so bitter in the State of Mississippi against negroes, that if removed to that State, the petitioner was in danger of assassination and of being killed, and that he could not have a fair and impartial trial in any of the courts of that State, and that to deliver him over to the authorities of the State of Mississippi was to deprive him as a citizen of the United States and a citizen and resident of the State of Missouri of the equal protection of the laws.

The petition concluded with the allegation that the petitioner's detention by said Creecy and Wolff was without due process of law and without lawful authority, that he was deprived of his liberty without due process of law, contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States, and that he being a citizen of the United States and within the jurisdiction of the State of Missouri, was deprived of the equal protection of the laws.

The petition then prayed that the writ of *habeas corpus*

issue commanding said Creecy and Wolff to produce the petitioner's body then in the holdover or jail as aforesaid in the city aforesaid, and under their custody detained under safe and secure conduct before his Honor as one of the Judges of the Circuit Court of the United States for the Division and District aforesaid, on a day to be named by his Honor and that his Honor inquire into the matter and on consideration thereof, cause the said Albert Marbles, the petitioner, to be released and discharged from his arrest aforesaid.

The petition further stated that no application for the relief sought had been made to any court or officer or officers superior to his Honor prior to the presentation of this petition.

The petition was duly verified by the affidavit of Albert Marbles and on the same day, to-wit, the 16th day of October, 1907, the Circuit Court ordered that the writ of *habeas corpus* issue as prayed, directed to Edmund P. Creecy, Chief of Police, and Casper Wolff, City Jailer of the City of St. Louis, State of Missouri, returnable October 19th, 1907, at 10 o'clock a. m.

On the 16th day of October, there was issued out of the Clerk's office of said court, a writ of *habeas corpus* in the name of the President of the United States of America, directed to Edmund P. Creecy, Chief of Police of the City of St. Louis, Missouri, and Casper Wolff, City Jailer of the City of St. Louis, Mo., commanding them that on October 19th, 1907, in the forenoon, according to law, without excuse or delay, they bring or cause to be brought before the Honorable Circuit Court of the United States for the Eastern Division Eastern Judicial District of Missouri at St. Louis, Missouri, the body of Albert Marbles, whatever name or addition he is known or called, who was unlawfully detained in their custody together with the day and cause of his detention then and there to abide at such order and direction as the said Court shall make in that behalf and to have with them this writ with their return endorsed thereon and that they fail not at their peril.

On the 19th day of October, 1907, Edmund P. Creecy, Chief of Police of the City of St. Louis, and State of Missouri, filed his return to the writ of *habeas corpus*, before issued, and Casper J. Wolff did likewise and produced in open court the body of the petitioner and on motion of the petitioner by his attorneys was ordered that the petitioner be allowed to October 21st, 1907, to plead to the returns and that in the meantime

the petitioner be returned to the custody of the respondent Wolff, Jailer as aforesaid.

The return of Edmund P. Creecy, Chief of Police as aforesaid, was to the effect that the petitioner, Albert Marbles, was not held in custody by him but was in the custody of the Jailer of the City of St. Louis.

The return of Casper J. Wolff, Jailer as aforesaid, to the writ of *habeas corpus* as aforesaid, was to the effect that the petitioner, Albert Marbles, the person named, was committed to and was then in his custody in the City of St. Louis, Missouri, by authority of a certain warrant duly issued by the Governor of the State of Missouri on the 16th day of October, 1907, witnessed by the great seal of the State of Missouri at the City of Jefferson, on said date by the Governor, Joseph W. Folk, a copy of which warrant was attached to the return and marked Exhibit A, and made a part of the return, and that in obedience to the writ of *habeas corpus*, the said jailer produced the body of the said Albert Marbles before the Honorable Circuit Court of the United States of the Division and District aforesaid, to be dealt with according to law.

Afterwards on the 21st of October, 1907, the petitioner filed a motion for his discharge upon the petition herein and the returns of said respondents, which motion was argued by counsel for the respective parties and submitted to the Court. The motion to discharge is set out at pages 8, 9 and 10 of the transcript of the record. And afterwards on the 22nd of October, 1907, by leave of Court, an amended return of the respondent, Casper J. Wolff, was filed which is set forth at pages 10, 11, 12, 13, 14 and 15 of the transcript of the record and was in the form of a specific denial of most of the allegations in the petitioner's application for the writ of *habeas corpus*.

Exhibit A, attached to the amended return was as follows:

"EXHIBIT A."

The State of Missouri to the Sheriff or Marshal of any County or City in this State:

Whereas, the Governor of the State of Mississippi has demanded of the Governor of this State, Albert Marbles, fugitive from justice from said State and whereas the Governor of Mississippi has produced to me a copy of an indictment in said State certified to be authentic, charging said fugitive with having committed the crime of assault to kill;

Now, therefore, I, Joseph W. Folk, Governor of the State of Missouri, do hereby command you to arrest the said Albert Marbles anywhere within the limits of this State, and him secure and deliver to W. J. Fletcher who is the agent of said State of Mississippi duly authorized to receive the said fugitive.

And I do hereby command all Sheriffs, Marshals, Constables and Police Officers to whom this warrant may be shown to aid and assist in the execution of this process. And you will make due return to me on this warrant of your proceeding thereunder.

In testimony whereof, I hereunto set my hand and cause to be affixed the Great Seal of the State of Missouri. Done at the City of Jefferson, this 16th day of October, in the year of our Lord, One Thousand Nine Hundred and Seven.

By the Governor, JOS. W. FOLK.

JNO. E. SWANGER.

Secretary of State.

The requisition of the Governor of the State of Mississippi was as follows:

STATE OF MISSISSIPPI,

EXECUTIVE DEPARTMENT.

James K. Vardaman, Governor of said State, to His Excellency, the Governor of the State of Missouri:

Whereas, it appears by the annexed copy of an indictment which is hereby certified to be authentic, that Albert Marbles stands charged with the crime of assault to kill, committed in the County of Warren in this State, and it has been represented to me that he has fled from the justice of this State, and has taken refuge in the State of Missouri.

Now, therefore, pursuant to the provisions of the Constitution and Laws of the United States in such case made and provided, I do hereby request that the said Albert Marbles be apprehended and delivered to W. J. Fletcher who is hereby authorized to receive and convey him to the State of Mississippi, there to be dealt with according to law.

This State will not be responsible for any expense attending the execution of this requisition for the arrest and delivery of fugitives from justice.

Given under my hand, and the Great Seal of the State affixed at the City of Jackson, this 11th day of

October, A. D. one thousand nine hundred and seven, and of the Independence of the United States of America the one hundred and thirty-two.

JAS. K. VARDAMAN.

By the Governor:

JOSEPH W. POWER,
Secretary of State.

And on the 23rd of October, 1907, the petitioner filed a motion to discharge on the amended return, which motion to discharge is set out on pages 15 and 16 of the transcript of the record and which motion was on the 26th day of October, 1907, overruled, and on the 26th day of October, 1907, the motion to discharge on the amended return having been overruled, the petitioner declined to plead further to the returns on the writ of *habeas corpus* as filed by the respondents. The Court declined to issue the writ of *habeas corpus*, and rendered judgment against the petitioner, as duly set out at page 17 of the transcript of the record.

The petitioner's assignment of errors is set out at page 18 of the transcript of the record. The petition and application for an appeal to the Supreme Court of the United States was duly filed by the petitioner and is set set out at page 19 of the transcript of the record, which appeal was duly allowed, and bond for the same was duly given, a copy of which is set forth at pages 19 and 20 of the transcript of the record.

The memorandum of the Court in overruling the petitioner's motion for discharge is contained in pages 21, 22, 23, 24 and 25 of the transcript of the record.

SPECIFICATION OF ERRORS.

First.

The requisition of the Governor of the State of Mississippi did not conform to the provisions of the laws of the United States, in that it contained the following paragraph:

> "This State will not be responsible for any expense attending the execution of this requisition for the arrest and delivery of fugitives from justice."

Second.

The warrant issued by the Governor of Missouri was void on its face because it does not appear therein that the petitioner

was found by the Governor to have been a fugitive from justice, nor that there was evidence submitted to the Governor that he was a fugitive from justice.

Third.

It does not appear by the warrant of the Governor of the State of Missouri nor by the requisition of the Governor of the State of Mississippi that the petitioner was within the State of Mississippi at the time when the crime was alleged to have been committed.

BRIEF.

First.

The provisions of Section 5278 will be strictly construed and all the requirements of the statute must be respected.

Ex parte Hart, 63 Fed. Rep., *l. c.* 259;
Ex parte Morgan, 20 Fed. Rep. 298;
Kentucky v. Dennison, 24 How. 66.

Second.

The following facts should have been clearly stated in the warrant issued by the Governor of the State of Missouri to show that it is issued in a case authorized by law and the power to issue the warrant depends upon the following facts:

1st. That the person is charged in some State or Territory of the United States with treason, felony or other crime.

2nd. That he had fled from justice and was found to be a fugitive from justice.

3rd. That he was found in the State.

4th. That the executive authority of the State from which he fled had demanded his delivery to be removed to the State having jurisdiction of the crime.

If the warrant omits to state that the person has fled from justice or that he is found in the asylum it is defective.

In matter of Romaine, 23 California 585, *l. c.* 592.

The executive of the asylum State is not required by the act of Congress to cause the arrest of appellant and his delivery to the agent appointed to receive him without proof of the fact that he was a fugitive from justice.

Ex parte Regal, 114 U. S. 642.

Third.

A warrant for arrest and return must recite and set forth the evidence necessary to authorize the State Executive to issue it and unless it does it is illegal and void and the warrant issued by the Governor of the State of Missouri should have stated that the Governor of the State of Missouri had found the appellant to have been a fugitive from justice.

In re Doo Woon, 18 Fed. Rep. 898;
Kentucky v. Dennison, 24 How. 66;
Ex parte Smith, 3 McLean 121.

Fourth.

Where the warrant alone is before the Court and is insufficient on its face the prisoner must necessarily be discharged.

State *ex rel.*, Standahl v. Richardson, 34 Minn. 115;
Ex parte Powell, 20 Fla, 806.

The warrant must recite that the person charged is a fugitive from justice and it is not enough that it state that the demanding executive has represented him to be such.

In re Jackson, 2 Flippin 183.

Fifth.

In a petition for a writ of *habeas corpus* verified by the oath of the petitioner as required by Section 754 R. S., facts duly alleged may be taken to be true unless denied by the return or controlled by other evidence, and in this case the return of the jailor did not deny that the prisoner, Albert Marbles, was not present in the State of Mississippi at the time when the crime was alleged to have been committed.

Whitten v. Tomlinson, 160 U. S. 231.

ARGUMENT.

I.

The requisition of the Governor of the State of Mississippi was void upon its face.

The provisions of Section 5278, Revised Statutes of the United States were not followed by the Governor of the State of Mississippi in issuing the requisition issued by him to the Governor of the State of Missouri, for the reason that the requisition contained a provision that was directly contrary to Section 5278 and more particularly, the last sentence of said Section, which is:

> "All costs and expenses incurred in the apprehending, securing and transmitting such fugitive to the State or Territory making such demand shall be paid by such State or Territory."

The requisition of the Governor of the State of Mississippi contained the following sentence:

> "This State will not be responsible for any expenses attending the execution of this requisition for the arrest and delivery of fugitives from justice."

All the provisions of Section 5278 must be strictly construed and all the requirements of the statute must be respected. Therefore, when this requisition of the Governor of the State of Mississippi containing this sentence that was contrary to law and when this requisition, defective upon its face in this respect, was presented to the Governor of the State of Missouri, the Governor of the State of Missouri could not and should not have issued his warrant. The requisition of the Governor of the State of Mississippi containing this aforesaid provision contrary to the law was void upon its face.

When Congress provides and designates the requirements to be followed and they are not followed, the person or State seeking to take advantage of the Act of Congress, cannot have it.

The right of one State of the Union to demand from another the delivery of a person who has fled from justice depends upon the Constitution of the United States and the mode

of proceeding and the evidence necessary to support such demand is prescribed by the Statutes of the United States.

In re Doo Woon, 18 Fed. 898.

II.

The warrant of the Governor of the State of Missouri was defective and void upon its face.

It did not appear therein that the petitioner had been found by the Governor of the State of Missouri to have been a fugitive from justice and until there was an express finding to that effect and unless the warrant declared upon its face that the Governor of the asylum State had so found, the warrant was void. The executive of an asylum State is not required by the Act of Congress to cause the arrest of an alleged fugitive and his delivery to the agent appointed to receive him without proof of the fact that he is a fugitive from justice, for that is the prerequisite fact to be found before a warrant can be issued. That is the essential thing upon which an application for extradition is based, for unless the accused is a fugitive from justice necessarily the demanding State has no right to ask his arrest and surrender to their agent.

III.

The warrant of the Governor of the State of Missouri does not recite the evidence necessary to authorize the executive of the State of Missouri to issue it.

In the warrant of the Governor of the State of Missouri, there is nothing to show that there was any evidence that was presented before the Governor of the State of Missouri showing that the petitioner was a fugitive from justice.

> "The removal of a person from one State as a fugitive from justice is a matter of the highest importance and cannot be made upon less evidence of the party's guilt and flight than would authorize a warrant of arrest in an ordinary case. And this both by the Constitution of the United States and of the State of Missouri is nothing less than information on oath which gives probable cause to believe that the person demanded has committed a particular crime against the law of the State making the demand, **and that he has fled therefrom on that account.**
>
> *In re Doo Woon*, 18 Fed. 898.

The warrant of the Governor of the State of Missouri simply recited that,

> "Whereas, the Governor of the State of Mississippi has demanded of the Governor of this State, Albert Marbles, fugitive from justice from said State."

There is no recital of the fact that the Governor of the State of Missouri found that Albert Marbles was a fugitive from justice of the State of Mississippi. There is no recital in the warrant even that Albert Marbles had fled from justice or that he was found in the State of Missouri, and that is a prerequisite in the issuance of a warrant according to the decision in the case of *in re* Romaine, 23 Cal. 585, *l. c.* 592.

In the case of *ex parte* Reggel, 114 U. S. 642, this Court said through Mr. Justice Harlan:

> "Under the Act of Congress, it becomes the duty of the Governor of Utah to cause the arrest of Reggel and his delivery to the agent appointed to receive him when it appears: **First,** that the demand by the executive authority of Pennsylvania was accompanied by a copy of an indictment or affidavit made before a magistrate charging Reggel with having committed treason, felony or other crime within that State and certified as authentic by her Governor. **Second,** that the person demanded was a fugitive from justice.

At page 651, Mr. Justice Harlan said:

> "The only question remaining to be considered relates to the alleged want of competent evidence, before the Governor of Utah at the time he issued the warrant of arrest to prove that the appellant was a fugitive from the justice of Pennsylvania. Undoubtedly the Act of Congress did not impose upon the executive authority of the Territory the duty of surrendering the appellant unless it was made to appear in some proper way that he was a fugitive from justice. In other words, the appellant was entitled under the Act of Congress to insist upon proof that he was within the demanding State at the time he is alleged to have committed the crime charged and subsequently withdrew from her jurisdiction so that he could not be reached by her criminal process. The statute, it is to be observed, does not prescribe the character of such proof; but that the executive authority of the Territory was not required by the Act

> of Congress to cause the arrest of appellant and his delivery to the agent appointed by the Governor of Pennsylvania, without proof of the fact that he was a fugitive from justice, is in our judgment clear from the language of the Act. Any other interpretation would lead to the conclusion that the mere requisition by the executive of the demanding State accompanied by the copy of an indictment or an affidavit from a magistrate and certified by him to be authentic charging the accused with crime committed within her limits imposes upon the executive of the State or Territory where the accused is found, the duty of surrendering him although he may be satisfied from incontestible proof that the accused had in fact never been in the demanding State and therefore could not be said to have fled from its justice. Upon the executive of the State in which the accused is found rests the responsibility of determining in some legal mode whether he is a fugitive from the justice of the demanding State. He does not fail in duty if he makes it a condition precedent to the surrender of the accused that it be shown to him by competent proof that the accused is in fact a fugitive from the justice of the demanding State."

Therefore, when the warrant of the Governor of the State of Missouri, made no recital whatever that the appellant had been found by him to be a fugitive from the State of Mississippi, it was void upon its face. The warrant of the Governor of the State of Missouri, did not recite the evidence necessary to authorize him to issue it.

It merely recited that the Governor of the State of Mississippi had produced a copy of an indictment in said State certified to be authentic.

Under the decision of the Supreme Court in *ex parte* Reggel, *supra*, it should have set forth the fact that in addition to the indictment, evidence had been submitted to the Governor of the State of Missouri that the appellant was a fugitive from justice, for otherwise, as said in that opinion, the mere requisition by the executive of the demanding State accompanied by a copy of an indictment would impose upon the executive of the asylum State the duty of surrendering the appellant which this Court held was not imposed upon the Governor of the asylum State.

In Kentucky v. Dennison, 24 How. 66, this Court, through Chief Justice Taney, said at page 18:

> "And it was equally necessary that the executive authority of the State upon which the demand was made when called on to render his aid, should be satisfied by competent proof that the party was so charged."

Where, as in this case, the warrant alone is before the Court, and is insufficient on its face, the prisoner must necessarily be discharged. This warrant was insufficient upon its face in that it did not set forth that any evidence outside of the indictment had been produced before the Governor of the State of Missouri, and did not set forth upon its face that the Governor of the State of Missouri had found the appellant to have been a fugitive from justice. It is not sufficient that the warrant set forth that the demanding executive has represented the appellant to be such fugitive from justice. In was so held in the case of *in re* Jackson, 2 Flippin, 183. But this warrant of the Governor of the State of Missouri did not even state that it had been represented to him that the appellant was a fugitive from justice. It simply characterizes him in the following way:

> "Whereas, the Governor of the State of Mississippi has demanded of the Governor of this State, Albert Marbles, **fugitive from justice from said State",**

not even stating that he was represented by the Governor of the State of Mississippi to have been a fugitive from justice, or that the Governor of Missouri had found him to be a fugitive from justice.

It was held in State *ex rel.* Standahl v. Richardson, 34 Minn. 115, and *ex parte* Powell, 20 Fla. 806, that where the warrant was before the Court and was insufficient upon its face, the prisoner must be discharged.

IV.

It must be taken as true because it is not denied by the return of the chief of police that the appellant was not within the State of Mississippi at the time the crime was alleged to have been committed.

It has been decided by this Court in the case of Whitten v. Tomlinson, 160 U. S. 231, that in a petition for a writ of *habeas corpus* verified by the oath of the petitioner, facts duly alleged may be taken to be true unless denied by the return

or controlled by other evidence. There being no denial by the return of the chief of police of the allegation in the appellant's petition that he was not within the State at the time the alleged crime was supposed to have been committed, this fact must be admitted as true, and that being so, the petitioner should have been discharged.

For the foregoing reasons and not attempting to argue here on that part of the appellant's petition which sets forth that if sent back to the State of Mississippi he is in danger of being assassinated and killed, the prisoner should be discharged, and the District Judge should have so ordered.

Respectfully submitted,

George D. Reynolds.
Attorney for Appellant.

MARBLES *v.* CREECY, CHIEF OF POLICE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

No. 23. Submitted November 5, 1909.—Decided November 15, 1909.

The executive of a State upon whom a demand is made for the surrender of a fugitive from justice may act on the papers in the absence of, and without notice to, the accused, and it is for that executive to determine whether he will regard the requisition papers as sufficient proof that the accused has been charged with crime in, and is a fugitive from justice from, the demanding State, or whether he will demand, as he may if he sees fit so to do, further proof in regard to such facts.

A notice in the requisition papers that the demanding State will not be responsible for any expenses attending the arrest and delivery of the fugitive does not affect the legality of the surrender so far as the rights of the accused under the Constitution and laws of the United States are concerned.

The executive of the surrendering State need not be controlled in the discharge of his duty by considerations of race or color, or, in the

absence of proof, by suggestions that the alleged fugitive will not be fairly dealt with by the demanding State.

On *habeas corpus* the court can assume that a requisition made by an executive of a State is solely for the purpose of enforcing its laws and that the person surrendered will be legally tried and adequately protected from illegal violence.

THE facts are stated in the opinion.

Mr. George D. Reynolds for appellant:

The provisions of § 5278, Rev. Stat., will be strictly construed and all the requirements of the statute must be respected. *Ex parte Hart*, 63 Fed. Rep. 259; *Ex parte Morgan*, 20 Fed. Rep. 298; *Kentucky* v. *Dennison*, 24 How. 66.

The following facts should have been clearly stated in the warrant issued by the Governor of surrendering State to show that it is issued in a case authorized by law and the power to issue the warrant depends upon the following facts:

1. That the person is charged in some State or Territory of the United States with treason, felony or other crime.

2. That he had fled from justice and was found to be a fugitive from justice.

3. That he was found in the State.

4. That the executive authority of the State from which he fled had demanded his delivery to be removed to the State having jurisdiction of the crime.

If the warrant omits to state that the person has fled from justice or that he is found in the asylum it is defective. *Matter of Romaine*, 23 California, 585, 592.

The executive of the asylum State is not required by the act of Congress to cause the arrest of appellant and his delivery to the agent appointed to receive him without proof of the fact that he was a fugitive from justice. *Ex parte Reggel*, 114 U. S. 642.

A warrant for arrest and return must recite and set forth the evidence necessary to authorize the state executive to issue it and unless it does it is illegal and void and the warrant is-

sued by the Governor of surrendering State should have stated that as such governor he had found appellant to have been a fugitive from justice. *In re Doo Woon*, 18 Fed. Rep. 898; *Kentucky* v. *Dennison*, 24 How. 66; *Ex parte Smith*, 3 McLean, 121.

Where the warrant alone is before the court and is insufficient on its face the prisoner must necessarily be discharged. *Standahl* v. *Richardson*, 34 Minnesota, 115; *Ex parte Powell*, 20 Florida, 806.

The warrant must recite that the person charged is a fugitive from justice and it is not enough that it state that the demanding executive has represented him to be such. *In re Jackson*, 2 Flippin, 183.

In a petition for a writ of *habeas corpus* verified by the oath of the petitioner as required by § 754, Rev. Stat., facts duly alleged may be taken to be true unless denied by the return or controlled by other evidence, and in this case the return of the jailor did not deny that the prisoner was not present in the demanding State at the time when the crime was alleged to have been committed. *Whitten* v. *Tomlinson*, 160 U. S. 231.

There was no appearance or brief for appellee.

Mr. Justice Harlan delivered the opinion of the court.

The appellant Marbles was indicted in the Circuit Court of Warren County, Mississippi, for the crime of having, in violation of the laws of Mississippi, made a deadly assault with the willful and felonious intent to kill and murder the person assaulted. Miss. Code, § 1043. The deputy sheriff of the county furnished a certified copy of the indictment to the Governor of Mississippi, as well as his affidavit that Marbles was a fugitive from the justice of that State and had taken refuge in Missouri, and applied for a requisition upon the Governor of Missouri for the arrest of the alleged criminal and his delivery to the agent of Mississippi, to be conveyed to the

latter State and there dealt with according to law. Thereupon the Governor of Mississippi issued his requisition, in the ordinary form, except that there was in it this unusual, not to say, extraordinary, provision: "This State will not be responsible for any expense attending the execution of this requisition for the arrest and delivery of fugitives from justice."

The Governor of Missouri honored the requisition made upon him and issued his warrant for the arrest of Marbles and his delivery to the designated agent of Mississippi. That warrant recited the fact that the accused was proceeded against as a fugitive from justice, and that the Governor of Mississippi had, as required by the statute of the United States, produced to the Governor of Missouri a copy of the indictment certified to be authentic, and charging the fugitive with having committed the crime of assault to kill. Rev. Stat., § 5278.

Marbles was arrested under this warrant, and, being in custody, sued out a writ of *habeas corpus* from one of the judges of the Circuit Court of the United States for his discharge upon the ground that he was deprived of his liberty in violation of the Constitution of the United States. The application for the writ was heard in that court. The reasons assigned in support of the contention just stated were: That the Governor of Missouri had no jurisdiction to issue a warrant for his arrest, in that it was not shown before that officer that the accused was a fugitive from the justice of Mississippi, or had fled from that State, nor was there any evidence before the Governor of Missouri that the petitioner was personally or had been continuously present in Mississippi when the crime in question was alleged to have been committed; that it appeared on the face of the indictment accompanying the requisition that no crime under the laws of Mississippi was legally charged or had been committed by the accused; that it did not appear before the Governor of Missouri, when the requisition was presented to him, that the petitioner was, in fact, a fugitive from the justice of Mississippi; that said req-

uisition was not certified to as required by the laws of the United States; that there was not produced to that executive a copy of any indictment or affidavit certified as authentic by the Governor of Mississippi; and that the petitioner was not present before the Governor of Missouri at the hearing before him of the warrant of extradition, nor was he given an opportunity to meet the witnesses face to face.

No reason whatever was shown on the hearing of the application for *habeas corpus* for the discharge of the accused from custody—nothing that showed any failure to conform to the requirements of the Constitution or laws of the United States. The material allegations of fact set forth in the application for the writ are wholly unsupported by anything in the record; indeed, some of them are affirmatively disproved by the record. No proof at all appears to have been made by the accused of any essential fact, and the decision of the court must have been based altogether upon the same official documents that were presented to the Governor of Missouri supported by the legal inferences to be drawn from their contents. It was made to appear by those documents that the accused was charged by indictment with a specified crime against the laws of Mississippi (Miss. Code, § 1043) and had become a fugitive from the justice of that State. That was legally sufficient, without more, to authorize a requisition, and when the Governor of Missouri was furnished, as he was, with a copy of the indictment against Marbles, certified by the Governor of Mississippi to be authentic, it then became the duty of the Governor of Missouri, under the Constitution and laws of the United States, to cause the arrest of the alleged fugitive. So reads the statute enacted in execution of the constitutional provision relating to fugitives from justice. Rev. Stat., § 5278. It is true that it does not appear from the record before us that there was any evidence before the Governor of Missouri other than the requisition of the Governor of Mississippi and a copy of the indictment against the alleged fugitive, certified to be authentic. It is also true that, so far

as the Constitution and laws of the United States are concerned, the Governor of Missouri could not legally have issued his warrant of arrest unless the accused was charged with what was made by Mississippi a crime against its laws and was a fugitive from justice. But those facts were determinable in any way deemed satisfactory by that executive, and he was not bound to demand—although he may have required if the circumstances made it proper to do so—proof apart from proper requisition papers that the accused was so charged and was a fugitive from justice. He was, no doubt, at liberty to hear independent evidence showing that the act with which the accused was charged by indictment was not made criminal by the laws of Mississippi and that he was not a fugitive from justice. No such proof appears to have been offered to the Governor or to the court below. But the official documents, reasonably interpreted, made a *prima facie* case against the accused as an alleged fugitive from justice and authorized that executive to issue his warrant of arrest as requested by the Governor of Mississippi. The contention that the Governor of Missouri could not act at all on the requisition papers in the absence of the accused and without previous notice to him is unsupported by reason or authority, and need only be stated to be rejected as unsound.

The principles here announced are firmly established by the decisions of this court. *McNichols* v. *Pease*, 207 U. S. 100; *Ex parte Reggel*, 114 U. S. 642, 652, 653; *Roberts* v. *Reilly*, 116 U. S. 80, 95; *Hyatt* v. *Corkran*, 188 U. S. 691, 719; *Munsey* v. *Clough*, 196 U. S. 364, 372; *Pettibone* v. *Nichols*, 203 U. S. 192; *Appleyard* v. *Massachusetts*, 203 U. S. 222.

Other questions may be noticed. One is, in effect, that the requisition of the Governor of Mississippi was invalid because of the clause or provision therein that that State would not be responsible for any expense attending the arrest and delivery of the alleged fugitive. We will not indulge in conjecture as to the object of inserting that clause in the requisition; particularly, as the State of Mississippi is not represented in

this court by counsel. It is sufficient now to say that the warning given to the Governor of Missouri that Mississippi would not be responsible for any expense attending the arrest and delivery of the alleged fugitive was a matter for the consideration of the Governor of the former State when he received the official demand for the arrest and delivery of the appellant as a fugitive from justice and a copy of the indictment against Marbles, certified as authentic. It was not a matter that could legally affect the inquiry before the Circuit Court on *habeas corpus*, whether the requisition of the demanding State and the action thereon by the Governor of Missouri were in substantial conformity with the Constitution and the laws of the United States, and, therefore, not in any legal sense hostile to the liberty of the accused.

The other question to be noticed is that raised by the following averments in the application for the writ of *habeas corpus:* "Your petitioner further states that he is a negro, and that the race feeling and race prejudice is so bitter in the State of Mississippi against negroes that he is in danger, if removed to that State, of assassination and of being killed, and that he cannot have a fair and impartial trial in any of the courts of that State, and that to deliver him over to the authorities of that State is to deprive him, as a citizen of the United States and a citizen and resident of the State of Mississippi, of the equal protection of the laws." It is clear that the executive authority of a State in which an alleged fugitive may be found, and for whose arrest a demand is made in conformity with the Constitution and laws of the United States, need not be controlled in the discharge of his duty by considerations of race or color, nor by a mere suggestion—certainly not one unsupported by proof, as was the case here—that the alleged fugitive will not be fairly and justly dealt with in the State to which it is sought to remove him nor be adequately protected, while in the custody of such State, against the action of lawless and bad men. The court that heard the application for discharge on writ of *habeas corpus* was entitled to

assume, as no doubt the Governor of Missouri assumed, that the State demanding the arrest and delivery of the accused had no other object in view than to enforce its laws, and that it would, by its constituted tribunals, officers and representatives, see to it not only that he was legally tried, without any reference to his race, but would be adequately protected while in the State's custody against the illegal action of those who might interfere to prevent the regular and orderly administration of justice.

We perceive no error of law in the record and the judgment of the Circuit Court must be affirmed.

It is so ordered.